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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

COREY JAMES THOMAS,

Defendant and Appellant.

C078882

(Super. Ct. No. P13CRF0145)

Defendant Corey James Thomas appeals from the trial court's order denying his Penal Code section 1170.18¹ petition for resentencing on his felony conviction for

¹ Undesignated statutory references are to the Penal Code.

receiving stolen property. He contends the trial court erred in finding the stolen item, a credit card, had a value exceeding \$950. We conclude defendant did not carry his burden of proving the value of the stolen card did not exceed \$950. We shall affirm the trial court's order.

BACKGROUND

On September 18, 2012, defendant received a Visa card he knew or should have known to be stolen. He later used the card fraudulently. The credit card belonged to Glenn R. Thomas, a dependent and elder adult. Defendant pleaded no contest to receiving stolen property (§ 496, subd. (a)), six counts of misdemeanor fraudulent use of an access card (§ 484g), and five counts of misdemeanor theft from an elder (§ 368, subd. (d)). He was granted three years' formal probation. After defendant violated his probation, he was sentenced on this and another case to serve a split term of eight months in county jail and three years of mandatory supervision.

Defendant subsequently filed a section 1170.18 petition for resentencing on the receiving stolen property conviction. The petition, prepared with the assistance of counsel, asserted the stolen credit card was worth less than \$950, but attached no evidence to support the claim.

At the first hearing on the petition, the trial court stated defendant had the burden of proving the stolen card's value, and that a credit card had a value equal to its credit limit. Defense counsel said the complaint should suffice to meet the burden of proof. Since it did not cost \$950 to replace the card, counsel asserted the burden of proof was met. Defense counsel asked for an evidentiary hearing that the trial court granted.

At the evidentiary hearing, defense counsel asked the trial court to take judicial notice of the complaint and that it does not cost \$950 to replace a credit card. Counsel stated the victim had died, “so I don’t know how I would even get evidence of what a limit -- or what’s available credit on a card, which I don’t believe can be used anyway, and that would be their burden, not mine. But I think a credit card is not \$950 to replace. [¶] So I would ask Your Honor to take judicial notice of its own file, specifically the Complaint. I’ll use that as my evidence. Submitted.”

The trial court asked defense counsel whether a person who loses a credit card with a \$2,000 credit limit first calls the credit card company “[b]ecause it’s 15 cents of plastic or because someone can charge up to 2,000 bucks on your card?” Counsel replied, “Maybe you want your card back so you can go charge \$2,000 worth of stuff.” The court disagreed and denied the motion without prejudice to presenting evidence of what could be charged on the card.

DISCUSSION

Section 1170.18, subdivision (a), provides: “A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing” Among the crimes affected by Proposition 47, is receiving stolen property which, absent certain exceptions not relevant here, is a misdemeanor if the value of the stolen items received does not exceed \$950. (§ 496, subd. (a).)

Defendant argues the stolen credit card’s “value was the replacement value of the plastic card--an amount well under \$950.” While defendant presents several arguments to support his position, we do not need to determine the proper way to value a stolen credit card² because defendant has not met his burden of proving his crime was eligible for resentencing under Proposition 47. He provided no evidence to support the assertion that the stolen credit card was worth less than \$950. We find *People v. Perkins* (2016) 244 Cal.App.4th 129 (*Perkins*) instructive.

In *Perkins*, the defendant was convicted of several offenses, including felony receipt of stolen property, for receiving a stolen credit card. (*Id.* at pp. 133-134.) The defendant subsequently filled out a form requesting section 1170.18 resentencing on the conviction and submitted it to the superior court. (*Perkins*, at p. 135.) The petition “state[d] the value of the stolen property did not exceed \$950. However, he did not identify the stolen property or attach evidence, a declaration, or include citations to the record of conviction to support the assertion that it did not exceed \$950 in value.” (*Ibid.*) The trial court denied the petition in an order that stated “only that defendant has ‘multiple residential burglaries [¶] 459 1st degrees--11378 HS--496 PC with losses over \$950--all not qualifying.’ ” (*Ibid.*) The trial court did not explain the basis of its finding the stolen property exceeded \$950 in value. (*Ibid.*)

On appeal, the defendant contended there was insufficient evidence the value of the stolen item exceeded \$950 to support the denial. (*Perkins, supra*, 244

² This issue is currently before the California Supreme Court. (See, e.g., *Caretto v. Superior Court* (May 19, 2016, B265256 [nonpub. opn.], review granted Aug. 10, 2016, S235419.)

Cal.App.4th at p. 135.) The Court of Appeal found the defendant bore the burden of establishing eligibility for resentencing. (*Id.* at p. 136.) Accordingly, “[i]n a successful petition, the offender must set out a case for eligibility, stating and in some cases showing the offense of conviction has been reclassified as a misdemeanor and, where the offense of conviction is a theft crime reclassified based on the value of stolen property, showing the value of the property did not exceed \$950. [Citation.] The defendant must attach information or evidence necessary to enable the court to determine eligibility. [Citation.]” (*Id.* at pp. 137-138.) Since the defendant did not provide evidence of the card’s value, he failed to meet his burden of proof. (*Id.* at p. 137.)

As in *Perkins*, defendant’s petition asserted the stolen credit card was worth less than \$950, but provided no evidence to support his assertion. While the trial court would have been justified, as was the case in *Perkins*, to summarily deny the petition, it gave defendant an opportunity to provide support for this assertion in an evidentiary hearing. Defendant presented no evidence of the credit card’s value other than referring to the complaint, which contained no allegations regarding the card’s value. We need not determine the proper way to value a stolen credit card; our task here is only to determine whether defendant met his burden of proving his crime was eligible for resentencing. Since defendant presented no evidence of the credit card’s value, the trial court correctly denied the petition without prejudice to his filing a successive petition supported by adequate evidence. (See *Perkins, supra*, 244 Cal.App.4th at p. 142 [“We affirm the order denying defendant’s petition for resentencing of his conviction for receipt of stolen property without prejudice to consideration of a subsequent petition that supplies evidence of his eligibility”].)

DISPOSITION

The judgment is affirmed.

_____/s/_____
HOCH, J.

We concur:

_____/s/_____
HULL, Acting P. J.

_____/s/_____
ROBIE, J.